therefore seems correct. *Peterson* v. *Widule* (Dist. Ct. of Milwaukee County, Wis.). Not officially reported.[8]

It would seem that those state legislatures which are desirous of obtaining the social benefits offered by such laws would do well, in framing them, to insure their constitutionality by providing that the cost of the examinations be borne by the state.

WHAT LAW GOVERNS LIABILITY OF SHAREHOLDERS FOR CORPORATE DEBTS. — On exactly what basis the individual liability of shareholders to corporation creditors should be placed is not clear. It is true the liability seems consensual, for a shareholder taking stock assents to be bound by the terms of the corporation charter and the law of the creating state. But there can be no strict contract, for the shareholder's obligation runs to no specified promisee.[1] Moreover, by a transfer of his shares, the stockholder can effect a complete novation, freeing himself from all liability, and yet this substitution requires no consent from creditor, state, or other shareholders. Hence some courts deny that the obligation is a contractual one, and declare it merely a statutory liability incidental to the ownership of shares.[2] Likewise it has been suggested that, though contractual, this liability is in the nature of a covenant running with the land and binds each successive shareholder.[3] Whether or not the real nature of the relationship can be logically explained on the authorities, it is generally treated as a contract between shareholder and creditor, subject to automatic novation, governed in terms by the corporation charter and the law of the creating state[4] and enforceable

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[8] A copy of the decision was furnished to the Review. The proceeding was a petition to compel the county clerk to issue a license to the petitioner even though he had no physician's certificate. It is understood that an appeal from the decision will be heard at an early date by the state supreme court.

The court held the law unconstitutional as violating the sections of the Wisconsin Constitution recognizing the inherent right of all to life and liberty, and forbidding control of or interference with rights of conscience. Art. I, secs. 1 and 18. The latter ground seems clearly unsound. People who conscientiously believe that the state has no concern with marriage are nevertheless amenable to the state marriage law. State *v.* Walker, 36 Kan. 297, 13 Pac. 279. On the former ground, the court's idea seems to be that the fit have an inalienable right to marry; that the state must not impair that right; and that the state does impair it if "it puts the applicant in the position of asking for and receiving, and the physician in the position of giving, services without a reasonable compensation." The defect here is that the physician cannot be compelled to serve at all — Hurley *v.* Eddingfield, 156 Ind. 416, 59 N. E. 1058 — much less to serve without reasonable compensation. Perhaps the court merely means to put the case on the ground that requiring the payment of the fee is the unconstitutional feature of the act.

[1] For a much fuller discussion of the principles here involved, see 23 HARV. L. REV. 37 *et seq.*

[2] Crippen *v.* Laighton, 69 N. H. 540, 44 Atl. 538; Hancock National Bank *v.* Farnum, 20 R. I. 466, 40 Atl. 341.

[3] This analogy, however, suggested in 23 HARV. L. REV. 38, is not wholly satisfying, for the assignor of shares is completely freed from all liability on assignment, while an assignor of a covenant running with the land may remain liable as well as his assignee.

[4] Flash *v.* Conn., 109 U. S. 371; Whitman *v.* Oxford National Bank, 176 U. S. 559; Aldrich *v.* Anchor Coal & Development Co., 24 Ore. 32, 32 Pac. 756; First National Bank *v.* Gustin, etc. Co., 42 Minn. 327, 44 N. W. 198; 1 WHARTON, CONFLICT OF LAWS,

anywhere the shareholder can be found, provided, of course, that the statute is not construed as restricting the exercise of the creditor's right to the state where created.[5]

Some apparent exceptions to this rule have been made in recent cases involving the conflict of law, in which it has been held that the California law for personal liability of stockholder to creditor can be enforced by a California creditor against resident shareholders of foreign corporations, although these corporations were incorporated in states exempting the shareholders from all individual liability.[6] The courts, however, explained the apparent inconsistency by the fact that these foreign companies were incorporated to do a California business and that therefore it may be assumed that the stockholders incorporated the California law into their charters, as far as business in that state was concerned, and hence by contract made themselves liable according to the California law. This reasoning seems objectionable in that it is based on fiction. Nevertheless it achieves an eminently just result by preventing evasion of the California law by incorporation abroad. But the doctrine applies with as much force to a non-resident shareholder as to one resident in California. It is most interesting, therefore, to see that in the case of a non-resident the courts refused to apply their former reasoning. When a California creditor sued a New York stockholder of a foreign corporation, doing business in California under authorization of its charter, the New York federal court held he was not liable unless individual authorization of the California business could be found.[7] The Supreme Court of the United States approved the ruling as to the law, but found as a fact that the shareholder individually authorized the acts in California, and so was bound by all the legal consequences given them by the California law.[8] *Thomas* v. *Matthiessen*, 34 Sup. Ct. 312.

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3 ed., § 105b. That the terms of the contract cannot be constitutionally changed as to the shareholder by later enactments increasing his liability, nor as to the creditor by later statutes decreasing it, see Bernheimer *v.* Converse, 206 U. S. 516, 530. But it is possible for either shareholder or creditor to waive his constitutional right by contracting on some other basis, see Ireland *v.* Palestine, etc. Turnpike Co., 19 Oh. St. 369, 373; Wells *v.* Black, 117 Cal. 157, 161, 48 Pac. 1090, 1091.

[5] For a detailed discussion of what creditors' remedies are transitory and what restricted to the jurisdiction creating the corporation, see 1 WHARTON, CONFLICT OF LAWS, 3 ed., § 105b; 23 HARV. L. REV. 37 *et seq.*

[6] Pinney *v.* Nelson, 183 U. S. 144; Peck *v.* Noee, 154 Cal. 351, 97 Pac. 865; Thomas *v.* Wentworth Hotel Co., 158 Cal. 275, 110 Pac. 942.

[7] Thomas *v.* Matthiessen, 170 Fed. 362. In deciding against the claims of the California creditor in this case Martin, J., said in part, "To my mind, the only theory under which this defendant can be held liable is by construing the acts of the corporation in doing business in the state of California . . . as an affirmative act on his part whereby he voluntarily became a contracting party, as no state can exercise direct jurisdiction and authority over persons or property without its territory." The judge then decided that "no contractual relation between these parties can fairly be implied." See also the same case in the Court of Appeals, 192 Fed. 495, where the court refused to find an assent to the California law on the ground that the charter of incorporation contained provisions expressly contrary thereto.

[8] In the course of the opinion, Justice Holmes remarked, "While the statutes of California cannot force an agent upon a foreign principal, still, if he has created such an agency in advance, he has come within the jurisdiction by his agent as in other cases of contracts made within a state from outside and will be bound."

This decision shows that there may be an entirely different basis for the liability of a shareholder, namely, his individual responsibility for acts which he has authorized the corporation agents to do abroad. The incorporating state may permit the shareholder to invoke the corporate fiction and by that means shield himself from the usual responsibility for acts he has caused in that state. But it has no power to alter the consequences which the law of another jurisdiction attaches to one who is responsible for an act done there.[9] The foreign state may, if it so wills, refuse to recognize this bar which the incorporating state seeks to place across the ordinary path to responsibility.

What will amount to individual authorization? In a case like the present, where the corporation was formed for the particular purpose of doing California business, there seems no injustice in holding the shareholders as personal authorizers. But where, without any authority from charter or shareholders, the directors start a corporation in business in another jurisdiction where the shareholders' liability is substantially changed, it seems that there is no personal authorization by the stockholders; thus here liability should be limited according to the charter of incorporation interpreted in the light of the law of the creating state.[10] A more difficult case presents itself where the shareholders authorize the directors to generally undertake business abroad, and to conform with foreign laws, and the directors accordingly take action by which the corporation transacts business where shareholders are individually liable. Here the English court has held that the shareholders did not personally authorize the act and denied a foreign creditor relief.[11] It seems, however, that the opposite result would be more just because transacting business under those conditions can probably be said to be within the general authorization.

On theory it would be impossible for a shareholder once personally liable for such acts abroad to thereafter transfer his liability by a transfer of his stock. The new shareholder should be liable for the consequences of the further acts, but all past liability being strictly personal should rest upon the old shareholder. Yet the semi-contractual liability

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[9] It is well settled that in the case of principal and agent, a principal authorizing an agent to do acts abroad will be liable for the consequences attached to them by the law of jurisdiction in which the acts are done. Albion Insurance Co. *v.* Mills, 1 Dow. & Cl. 342, 363; Malpica *v.* McKown, 1 La. 248; Arayo *v.* Currel, 1 La. 528; Baldwin *v.* Gray, 4 Mart. N. S. (La.), 192 (principal a partnership); Maspons *v.* Mildred, 9 Q. B. D. 530 (principal undisclosed); First National Bank of Geneva *v.* Shaw, 109 Tenn. 237, 70 S. W. 807 (principal a married woman incapable of contracting by law of her domicile). See Milliken *v.* Pratt, 125 Mass. 374, 376, 3 BEALE, CAS. CONFLICT OF LAWS, p. 515; DICEY, CONFLICT OF LAWS, 2 ed., 609–611; FOOTE, PRIVATE INTERNATIONAL JURISP., 3 ed., 426, 448 *et seq.*; WESTLAKE, PRIVATE INTERNATIONAL LAW, 4 ed., § 223. The above rule binding a principal for acts of a human agent abroad should be equally applicable to the case where the agent so acting is a corporation.

[10] No case can be found which stands with certainty for the above proposition. Leyner Engineering Works *v.* Kempner, 163 Fed. 605, is a possible authority upon the point, but the facts are not given with sufficient clearness to justify an unqualified citation. Of course the above reasoning is applicable only where the unauthorized act of the directors is *intra vires*. For if *ultra vires* the shareholders should not be liable even according to the terms of the charter, since there is no corporate action. See 23 HARV. L. REV. 510.

[11] Risdon Iron & Locomotive Works *v.* Furness, [1906] 1 K. B. 49.

of a shareholder imposed by the corporation charter is subject to automatic novation, and perhaps on grounds of convenience rather than logic the same result would be reached here.

STATE LEGISLATION TAKING AWAY RIGHTS PREVIOUSLY RECOGNIZED IN ADMIRALTY COURTS. — If a person, receiving injuries on the navigable waters of a state, elects to pursue his remedy in the admiralty court, will recovery be denied him because a state statute purports to extinguish rights based on such injuries? In this question there is necessarily involved the determination of what substantive law the federal admiralty courts apply. Under the common law conception of territorial sovereignty, over a single legal unit known as a state there can be but one sovereign — the state. This sovereign may delegate to another the power of deciding by legislation what rights will be predicated on certain acts done within the state territory, or may allow the representatives of the other sovereign to adjudicate these rights. By the Constitution, the states made a certain delegation of authority to the federal government in relation to maritime matters. Art. III, sec. 2, provides that "The judicial power shall extend to all cases of admiralty and maritime jurisdiction." Now before the adoption of the Constitution, rights of individuals on the sea were adjudicated in the admiralty court of each state, if the parties chose that rather than the common law forum.[1] Certain rights not known to the common law were recognized by the general maritime law,[2] upon which was based the admiralty law applied in each state admiralty court. Causes of action based on these rights could only be tried in the state admiralty courts. The confusion inevitably resulting from the diversity in the state laws, was the reason for the delegation regarding admiralty matters; and in order to effectually carry out the desire for uniformity in maritime laws shown by the Constitution, there has been implied, with the delegation to the courts, a grant to Congress of power to regulate rights over which the admiralty courts would have jurisdiction.[3] The exact scope of this power is not definitely marked out by the authorities, but its extent would seem to be the same as that of the analogous power over interstate commerce. If this view is sound, Congress has supreme power to regulate the law of all admiralty matters; but, until Congress acts, the maritime law of the individual state where the cause arose will govern; and the states may further enact laws regulating admiralty rights within their borders, on matters as to which uniformity throughout the country is not essential.

On the whole, the decisions and the language of the federal courts seem inconsistent with any other view. The fact that admiralty courts

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[1] BENEDICT, ADMIRALTY, secs. 98–104; HUGHES, ADMIRALTY, sec. 3.

[2] The Albert Dumois, 177 U. S. 240, 20 Sup. Ct. Rep. 595. The general maritime law, so called, originated much earlier than the common law, and is based on the customs of mariners. Very much as did the law merchant, it became a part of the municipal law of various countries, governing the rights and liabilities of parties to maritime transactions, when such transactions were cognizable in courts of admiralty. See BENEDICT, ADMIRALTY, 4 ed., secs. 44–49, 105–109; HUGHES, ADMIRALTY, sec. 2.

[3] *In re* Garnett, 141 U. S. 1, 11 Sup. Ct. Rep. 840.